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## SENATE BILL No. 49

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-38-5-1.

**Synopsis:** Expungement of arrest records. Provides for the expungement under certain circumstances of the arrest records of a person whose conviction has been vacated if the state may not or will not refile charges against the person.

**Effective:** July 1, 2006.

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**Bowser**

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January 9, 2006, read first time and referred to Committee on Judiciary.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 49

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 35-38-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Whenever:

(1) an individual is arrested but no criminal charges are filed against the individual; ~~or~~

(2) all criminal charges filed against an individual are dropped because:

(A) of a mistaken identity;

(B) no offense was in fact committed; or

(C) there was an absence of probable cause; ~~or~~

**(3) an individual's conviction has been vacated and the state may not or will not refile charges against the individual;**

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in:

**(1) the court of conviction, if the individual has been convicted;**

**(2) the court in which the charges were filed, if the individual**



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1 **was charged but has not been convicted; or**

2 **(3) if ~~no criminal charges were filed~~, in a court with criminal**  
 3 **jurisdiction in the county where the arrest occurred, ~~if no~~**  
 4 **criminal charges were filed.**

5 **(c) The petition must set forth:**

6 (1) the date of the arrest;

7 (2) the charge;

8 **(3) the date of conviction, if applicable;**

9 **(4) the date the conviction was vacated, if applicable;**

10 **(5) the basis on which the conviction was vacated (including**  
 11 **the opinion or order from a court), if applicable;**

12 ~~(3)~~ **(6) the law enforcement agency employing the arresting**  
 13 **officer;**

14 ~~(4)~~ **(7) any other known identifying information, such as the name**  
 15 **of the arresting officer, case number, or court cause number;**

16 ~~(5)~~ **(8) the date of the petitioner's birth; and**

17 ~~(6)~~ **(9) the petitioner's Social Security number.**

18 ~~(c)~~ **(d) A copy of the petition shall be served on the law enforcement**  
 19 **agency and the state central repository for records.**

20 ~~(d)~~ **(e) Upon receipt of a petition for expungement, the law**  
 21 **enforcement agency shall notify the court of the name and address of**  
 22 **each agency to which any records related to the arrest were forwarded.**  
 23 **The clerk shall immediately send a copy of the petition to each of those**  
 24 **agencies. Any agency desiring to oppose the expungement shall file a**  
 25 **notice of opposition with the court setting forth reasons for resisting the**  
 26 **expungement along with any sworn statements from individuals who**  
 27 **represent the agency that explain the reasons for resisting the**  
 28 **expungement within thirty (30) days after the petition is filed. A copy**  
 29 **of the notice of opposition and copies of any sworn statements shall be**  
 30 **served on the petitioner in accordance with the Rules of Trial**  
 31 **Procedure. The court shall:**

32 (1) summarily grant the petition;

33 (2) set the matter for hearing; or

34 (3) summarily deny the petition, if the court determines that:

35 (A) the petition is insufficient; or

36 (B) based on information contained in sworn statements  
 37 submitted by individuals who represent an agency, the  
 38 petitioner is not entitled to an expungement of records.

39 ~~(e)~~ **(f) If a notice of opposition is filed and the court does not**  
 40 **summarily grant or summarily deny the petition, the court shall set the**  
 41 **matter for a hearing.**

42 ~~(f)~~ **(g) After a hearing is held under this section, the court shall**

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1 **grant the petition ~~shall be granted~~ of an individual who has not been**  
2 **convicted** unless the court finds:  
3 (1) the conditions in subsection (a) have not been met;  
4 (2) the individual has a record of arrests other than minor traffic  
5 offenses; or  
6 (3) additional criminal charges are pending against the individual.  
7 **(h) After a hearing is held under this section, the court shall**  
8 **grant the petition of an individual whose conviction has been**  
9 **vacated if the state may not or will not refile charges against the**  
10 **individual, unless the court finds that additional criminal charges**  
11 **are pending against the individual.**

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